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In the Supreme Court of the United States

ALLEN BRIDGERS,
Petitioner,
VS.

THE STATE OF TEXAS,
Respondent.

On Petition For Writ of Certiorari
to the Texas Court of Criminal Appeals

RESPONDENT'S BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTIONS PRESENTED

1. WHETHER FORT LAUDERDALE POLICE "SEIZED" PETITIONER WITHIN THE MEANING OF THE FOURTH AMENDMENT WHEN, AFTER PETITIONER HAD VOLUNTARILY CONSENTED TO ACCOMPANY POLICE TO THE STATION-HOUSE, POLICE HANDCUFFED HIM FOR THE JOURNEY.

2. WHETHER A PRE-INTERROGATION WARNING THAT PETITIONER HAD "THE RIGHT TO THE PRESENCE OF AN ATTORNEY/LAWYER PRIOR TO ANY QUESTIONING," VIOLATED *MIRANDA V. ARIZONA*.

3. WHETHER THE EIGHTH OR FOURTEENTH AMENDMENTS REQUIRED PETITIONER'S CAPITAL SENTENCING JURY TO BE INSTRUCTED THAT HE WOULD BE ELIGIBLE FOR PAROLE AFTER FORTY YEARS IF GIVEN A LIFE SENTENCE.

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

NOW COMES the State of Texas, Respondent[1] herein, by and through the Attorney General of Texas, and files this Brief in Opposition.

OPINIONS BELOW

A copy of the unpublished opinion of the Texas Court of Criminal Appeals, affirming Bridgers' conviction and sentence of death, is attached as an appendix to his petition for writ of certiorari. *See Bridgers v. State*, No. 73,112, slip op. (Tex. Crim. App. Oct. 25, 2000).

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[1] For purposes of clarity, the petitioner is referred to as "Bridgers" and the respondent is referred to as "State."

JURISDICTION

Bridgers seeks to invoke this Court's jurisdiction pursuant to 28 U.S.C. § 1257, which governs petitions for writ of certiorari to a state court of last resort. *See* Petition at 6.

CONSTITUTIONAL PROVISIONS INVOLVED

Bridgers bases his complaints on the Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution, relevant portions of which are set forth in his petition. *See* Petition at 4-5.

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition Below

On August 21, 1997, a grand jury indicted Allen Bridgers in the 114th Judicial District Court of Smith County, Texas, for the offense of capital murder. 1 Tr 2;[2] *see also* TEX. PENAL CODE ANN. § 19.03(a) (Vernon 1997). Specifically, the indictment charged Bridgers with murdering Mary Amie in the course of committing or attempting to commit robbery, or, in the alternative, with murdering Mary Amie in the course of committing or attempting to commit burglary.[3] 1 Tr 10-11.

After Bridgers pleaded not guilty, a jury found him guilty of capital murder as alleged in the indictment on April 3, 1998. 3 Tr 306; 31 SR 126-27. On April 9, 1998, following

[2] "Tr" refers to the transcript of pleadings and documents filed with the court during trial, preceded by volume number and followed by page numbers. "SR" refers to the state record of transcribed trial proceedings, preceded by volume number and followed by page numbers. "SX" refers to the State's trial exhibits, followed by an exhibit number.

[3] After the State's case-in-chief, the trial court granted Bridgers' unopposed motion for an instructed verdict with regard to the second paragraph of the indictment, alleging murder in the course of a burglary. 30 SR 109. Accordingly, the jury was charged only with the theory that the murder occurred during the course of a robbery. *See* 3 Tr 290-94.

a separate punishment hearing, the jury answered in the affirmative the first special sentencing issue, regarding Bridgers' future dangerousness, and answered in the negative the second special sentencing issue, regarding the existence of sufficient mitigating circumstances to warrant a life sentence. 3 Tr 360-61; 35 SR 65-66. In accordance with state law, the trial court assessed Bridgers' punishment at death. 3 Tr 366-69; *see also* TEX. CODE CRIM. PROC. ANN. art. 37.071, §2(g) (Vernon Supp. 1998).

Bridgers' conviction and sentence were automatically appealed to the Court of Criminal Appeals of Texas, which affirmed in an unpublished opinion on October 25, 2000. *Bridgers v. State*, No. 73,112, slip op. (Tex. Crim. App. Oct. 25, 2000). Bridgers' motion for rehearing was subsequently denied and a mandate affirming his conviction was issued on December 6, 2000. *See* Mandate. This petition for writ of certiorari followed.[4]

B. Statement of Facts

1. Guilt/Innocence Phase

The events that ultimately led to the murder of Mary Amie began in April of 1997, when Amie's nephew, Donnie Miller, picked up Bridgers at a truck stop in Norfolk, Virginia, and agreed to give him a ride to Texas. 26 SR 39-41. However, Miller's duties as a truck driver did not take him directly to Texas, and the two men spent the next month driving around the country together. 26 SR 41-42. During their time on the road, Miller taught Bridgers how to drive a truck and agreed to help him get into a truck driving school. 26 SR 42-43. Eventually, the two men arrived in Miller's hometown of Tyler, Texas, where

[4] Concurrent with his direct appeal, Bridgers filed a state application for writ of habeas corpus, which was denied by the Court of Criminal Appeals on May 31, 2000. *Ex parte Bridgers*, Application No. 45,179-01, slip op. (Tex. Crim. App. May 31, 2000) (unpublished). Also, on November 13, 2000, Bridgers was appointed counsel in the United States District Court for the Eastern District of Texas in anticipation of filing a federal writ of habeas corpus. *Bridgers v. Johnson*, No. 00-CV-724 (E.D. Tex. 2000).

Bridgers was allowed to stay with Miller's family while Miller went back out on the road.[5] 26 SR 43-44.

When Bridgers arrived in Tyler, he was introduced to Miller's aunt, Mary Amie. 26 SR 44. By the time Miller returned to Tyler on May 22, Bridgers was living "off and on" with Amie – part of the time Bridgers would stay with Miller's family and part of the time he would stay at Amie's trailer home.[6] 26 SR 46-47.

On Friday, May 23, 1997, Bridgers was staying at Amie's house. 26 SR 48. Miller called the house at around 7:30 p.m. and made plans to go fishing with Bridgers the following morning. 26 SR 49. However, when members of the family tried to call Amie's house the next day, there was no answer. 26 SR 50; 27 SR 53-54. Also, Amie's maroon Lincoln Town Car was missing from its usual spot in front of her house. 26 SR 51; 27 SR 48. Furthermore, Amie did not show up for work that Saturday, although she was scheduled to do so.[7] 26 SR 51, 69.

On Sunday, May 25, Amie's niece, Wanda Williams, drove by Amie's house and noticed that the front door was cracked open. 27 SR 47-48. She found this strange because she had assumed that the reason the family had been unable to contact Amie was because she had left town. 27 SR 47-48. Thus, Williams approached the house and knocked on the

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[5] Miller testified that he initially agreed to give Bridgers a ride because he felt that Bridgers simply "needed [his] help." 26 SR 40-41. Once the men started talking, Miller said that Bridgers seemed like a "good person," so Miller taught him the fundamentals of driving a truck. 26 SR 41-42. Also, while on the road, Miller provided Bridgers with all of his meals and lodging. 26 SR 42. Over time, Miller grew fond of Bridgers and indicated that he had no doubts or problems with allowing Bridgers to stay with his family while he was away. 26 SR 41-42, 46.

[6] About two or three months prior to her death, Amie had bought a new black-and-white, double-wide trailer home in Smith County, Texas. 27 SR 45-46.

[7] Amie's time card from the bakery where she worked revealed that she clocked-out at 11:49 p.m. on Friday, May 23. 26 SR 67; SX 1. She was scheduled to report to work again at 7:45 p.m. on Saturday, May 24. 26 SR 68-69; SX 2.

door. 27 SR 48. She then proceeded inside because the door was open and she could hear that the television set had been left on. 27 SR 48. She then started calling her aunt's name, but got no answer. 27 SR 48. She eventually made her way into the master bedroom where she found her aunt's lifeless body lying awkwardly on the bed. 27 SR 48-49, 50-51. Specifically, Amie was lying on her back with a pillow over her head and with her arms "locked" in an upright position. 27 SR 50. Williams noticed blood and saw that the color was gone from her aunt's body. 27 SR 50. She then reached for the phone to call 9-1-1, but the cord had been pulled out of the wall.[8] 27 SR 49, 50. Afraid that the whoever may have killed her aunt might still be in the house, she quickly left to tell her parents what she had found. 27 SR 49, 51.

When police arrived at the scene, they found Amie lying on her back with her feet hanging over the side of the bed. 27 SR 70-71, 118; SX 13, 14, 15. It was apparent that Amie had been dead for at least twenty-four hours before her body was discovered. 27 SR 64, 119. Police quickly noticed that there were few signs of any type of struggle and no sign of forced entry through either the doors or the windows. 27 SR 92. In the living room, police found a briefcase containing a truck driving manual and various pieces of paperwork belonging to Allen Bridgers. 27 SR 93-94. Inside the bedroom, police also found two live .38 caliber bullets and an empty, felt-zippered pistol case. 27 SR 103-05. They also found a spent bullet underneath the body. 27 SR 108-09; 29 SR 79.

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[8] Police later discovered that the two other phones in the house had likewise been unplugged. 27 SR 89-90.

A subsequent autopsy revealed that Amie had died as a result of two fatal gunshot wounds to the neck and to the trunk. 30 SR 63. The first wound was caused by a bullet that entered Amie's left back, traveled through a portion of her vertebra and through two lobes of her right lung, and eventually became lodged in the right wall of her chest. 30 SR 44, 57-58; SX 41, 42. The second bullet entered the right side of Amie's neck just beneath her chin, then traveled through a portion of her thyroid gland, her right jugular vein, and her neck muscles, before finally exiting out of her right shoulder. 30 SR 55; SX 38, 39.

Three days after Amie's body was found, police in Fort Lauderdale, Florida, received a Crime Stoppers' tip which led them to the Holiday Park area of the city. 26 SR 74-75. There, they met with the individual who had phoned in the tip. 26 SR 75. That individual relayed that he had information regarding a murder suspect from Texas. 26 SR 76. They then went to the park where the individual pointed out Bridgers. 26 SR 77-78. Officers subsequently approached Bridgers, advised him that they were conducting an investigation, and told him that they wished for him to come down to the police department to answer some questions. 26 SR 78-79. Bridgers cooperated, and voluntarily agreed to accompany officers to the station-house. 26 SR 79-80. Once at the station, police were able to identify Bridgers through his driver's license and confirm the existence of a Texas arrest warrant. 26 SR 80-84.

After he was identified and read his *Miranda* warnings, Bridgers agreed to give police a taped statement.[9] SX 4. In his statement, Bridgers admitted that he had killed Amie "for the money" after she had come home from work on May 23. He indicated that he knew

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[9] After initially being read his *Miranda* warnings, Bridgers asked that he be able to contact his mother. 26 SR 96-97; 27 SR 13-16. Police allowed Bridgers to speak with his mother over the phone, after which Bridgers was re-*Mirandized* and interviewed. 26 SR 98-99; 27 SR 18-19; SX 4.

that Amie had borrowed about sixteen-hundred dollars from a bank in order to build a fence around her house,[10] and that she kept the money inside of her purse. He also said that he knew that Amie had about two or three thousand dollars worth of jewelry that she kept inside of her pocketbook. Thus, before Amie came home from work, Bridgers located a gun that Amie kept beside her bed and placed it beneath his pillow. Then, when Amie finished showering and got in bed with Bridgers, he slid the gun out from beneath the pillow and pulled the trigger. The gun, however, did not immediately discharge. Instead, the gun just "clicked" and Amie turned her head and looked at Bridgers. Bridgers then pulled the trigger a second time and shot Amie in the back. She then started "hollering Jesus and all that stuff," so Bridgers shot her two additional times because he "didn't want nobody to hear her hollering." He then grabbed her purse and the keys to her car and ran out the front door of the trailer. SX 4.

Bridgers told police that after he left the house, he took Amie's Lincoln to "the crack spot" where he smoked crack cocaine for the rest of the night.[11] He also picked up two girls and took them to a hotel room.[12] The next morning, he drove to Dallas[13] where he bought

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[10] At Bridgers' trial, a manager from Norwest Financial testified that Amie was given a loan for $1,685.56, on May 10, 1997. 28 SR 108-12; SX 33.

[11] At trial, a man named Ernest Jernigan testified that, in the early morning hours of May 24, 1997, he saw Bridgers at a house where Jernigan had been staying. 28 SR 71-72. Bridgers was in the company of two women and had with him a roll of money and what looked like cocaine. 28 SR 73-76. During a conversation, Bridgers told Jernigan that he was a truck driver from Norfolk, Virginia. 28 SR 74.

[12] Records introduced at trial from the Town House Motel in Tyler, Texas, showed that Bridgers used his Virginia driver's license to check into the motel sometime in the late evening or early morning hours after the murder. 28 SR 59-62; SX 6, 27. Likewise, a woman named June Richards testified that she was one of two women that Bridgers brought to the motel that evening. 30 SR 86-88. She indicated that she had met Bridgers at a friend's house and that Bridgers was smoking crack cocaine. 30 SR 85-87. She also said that Bridgers had a good deal of money with him. 30 SR 88. According to Richards, they then went to the motel where they stayed until about five or six in the morning. 30 SR 88. When Bridgers left the motel, he asked the women for

a bus ticket to Los Angeles, California. The bus did not leave for some time, however, so Bridgers bought some more crack cocaine and stayed the night in a hotel room. Bridgers also indicated that he pawned the jewelry that was in Amie's purse at various Dallas pawn shops.[14] Bridgers later made plane reservations with Value Jet Airlines to go to Fort Lauderdale, Florida. On Sunday morning, he traveled to Dallas/Ft. Worth International Airport and caught the 10:30 a.m. flight.[15] SX 4. Based on the information provided in Bridgers' statement, police were able to recover Amie's car in a parking lot across the street from the Dallas bus station. 27 SR 124-25; SX 23, 24, 25.

Following the State's case-in-chief, Bridgers introduced evidence showing that, after the murder, he called both his mother and his brother to tell them what he had done. 30 SR 133-34; 31 SR 10-12. Both of Bridgers' relatives indicated that he was "babbling" and "wasn't talking right." 30 SR 133-34; 31 SR 12. Bridgers also introduced evidence from his wife that he had been tested for AIDS shortly before he left for Texas, and that the experience left him scared of the possibility of acquiring the virus. 31 SR 46-47. Bridgers then offered the testimony of a family practitioner in Tyler who indicated that Bridgers was treated for gonorrhea at his office on May 13, 1997. 31 SR 53-56. Based on this evidence,

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directions to Dallas. 30 SR 89. Before he left in Amie's burgundy Lincoln, Bridgers gave Richards a purse. 30 SR 89-90. The purse was later identified as belonging to Mary Amie. 28 SR 103.

[13] Bridgers later told Amie's sister that after he killed Amie, he disposed of the pistol by throwing it out the window on his way to Dallas. 30 SR 103-04. Similarly, in his statement to police, Bridgers said that he threw the gun away in Dallas near some abandoned buildings. SX 4.

[14] Police were subsequently able to recover pawn tickets from two Dallas pawn shops which listed Bridgers' name and address, as well as the property that was pawned. 29 SR 9-11, 15-20; SX 34, 35. The State also introduced testimony from a homeless man named Johnell Hamilton, who said that while he was in front of the Dallas bus station, Bridgers had approached him and asked where he could find a pawn shop. 29 SR 53-55. According to Hamilton, Bridgers had with him a large amount of money, some crack cocaine and a silver-colored revolver. 29 SR 55-56.

[15] The airline's records showed that Bridgers checked in for the flight to Fort Lauderdale at 10:19 a.m. on May 25, 1997. 29 SR 30-31; SX 36.

defense counsel argued that Bridgers had killed Mary Amie because she had infected him with a sexually transmitted disease, and that the robbery was simply an afterthought. 31 SR 99-101.

2. Punishment Phase

During the punishment phase of trial, the State offered evidence detailing the extent of Bridgers' prior criminal activities. For instance, in August of 1989, Bridgers stole a VCR from a store in Merced, California. 32 SR 110-12, 119. He subsequently pawned the VCR at a local pawn shop, but was located by police based on the pawn shop's records. 32 SR 112-13. Bridgers later pleaded guilty to the offense of petty theft after it was reduced from burglary. 32 SR 118-19; SX 43. Bridgers was placed on probation for thirty-six months, sentenced to six days in jail, and ordered to complete one-hundred hours of community service. 32 SR 118; SX 43.

In December of 1990, Bridgers burglarized a trailer home in Hinesville, Georgia. 33 SR 9-10. Police arrived to discover that the home had been broken into through a bedroom window, and that the burglar had stolen various pieces of electronics equipment and several firearms. 33 SR 10-13. Ultimately, the investigation led to Bridgers, and police were subsequently able to recover much of the stolen property at Bridgers' residence and in local pawn shops. 33 SR 13-16. Bridgers subsequently pleaded guilty to burglary and was placed on four-and-a-half years probation. SX 47.

On January 17, 1992, Bridgers committed another burglary in the Hinesville area. Specifically, Bridgers broke into the kitchen window of a residence and stole various pieces of electronics, some cash and jewelry, and a .22 caliber pistol. 33 SR 24-29. Bridgers pleaded guilty to burglary and was sentenced to six years' confinement. SX 47. Bridgers also pleaded guilty to the offense of financial transaction card fraud and was sentenced to

another three-year concurrent term. SX 47. Bridgers' probation in the 1990 burglary was also revoked, and he was sentenced to three years' confinement to be served concurrently. SX 47.

Additionally, the State introduced evidence that in July of 1991, Bridgers committed the offenses of reckless driving, eluding a police officer and carrying a concealed weapon while on a federal military base. 33 SR 51. Based on Bridgers' guilty plea, the United States District Court for the Southern District of Georgia sentenced Bridgers to six months' confinement on the first two counts and one-year probation on the third court. 33 SR 50-51; SX 50. Bridgers' probation was ultimately revoked in April of 1992 based on the state burglary charge. 33 SR 52; SX 50. Specifically, Bridgers committed the burglary only twenty-one days after being placed on federal probation. 33 SR 53. He therefore was ordered to serve nine months in federal prison. 33 SR 56; SX 50.

Finally, the State offered testimony from a Merced, California, police officer that on March 17, 1990, Bridgers fired a handgun on the grounds of a middle school. 34 SR 10-15. Police were dispatched based on a report that a man was walking across a school-yard firing a weapon. 34 SR 13-14. They arrived to find Bridgers in an adjacent field. 34 SR 19. Inside of Bridgers' bag, police found a revolver that had black stains on the cylinder and was warm to the touch. 34 SR 14-15. These indications were consistent with the weapon having recently been fired. 34 SR 15.

In addition to the evidence of Bridgers' criminal history, the State presented certain victim impact testimony from Amie's sister and nephew. Both testified regarding the impact Amie's death had on their family and on their individual lives. 33 SR 67-70, 73-77. They also each spoke of the type of person Amie was and how much she would "always be missed." 33 SR 67-70, 73-77.

The defense offered witnesses who testified regarding Bridgers' troubled upbringing, low intelligence, and mixed mental history. For instance, Bridgers' mother, Linda Gorum, recounted how his father was a drug addict who would beat her in front of her two children. 34 SR 24-27. She also told of how her second husband believed in "extreme" discipline and would whip the boys with belts, sometimes leaving obvious marks. 34 SR 29-30. Additionally, Gorum testified that Bridgers failed the second grade "two or three times" and that he had to be placed in special education classes. 34 SR 31-32. When he reached high school, Bridgers was put in normal classes, but couldn't keep up and dropped out after the tenth grade. 34 SR 31-32. She also indicated that she thought some of Bridgers' learning disabilities could be attributed to accidents that he had while he was young. Gorum told jurors that when he was ten or eleven, he had been hit by a car and suffered a head injury. 34 SR 32-34. She also said that Bridgers was dropped on his head as an infant and had fallen down a set of stairs in his walker as a small child. 34 SR 33. Gorum described Bridgers as a "follower" growing up, who was "not outgoing at all." 34 SR 35. She recalled that when Bridgers was incarcerated in Georgia, he would call her almost every day. 34 SR 36-37. She said that when he was released, he took medication for depression and for "voices," but quit taking it when neither she nor Bridgers could afford it.[16] 34 SR 38-39.

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[16] On cross-examination, Gorum admitted that the State of Virginia had twice sent Bridgers to a juvenile reform school when he was young. 34 SR 42-43. She indicated that Bridgers

The defense also offered the testimony of Bridgers' younger brother, Harry. He recounted how their mother's second husband would beat them with extension cords, switches, belts, or "whatever he could get his hands on." 34 SR 57-58. He told jurors of a specific occasion when their step-father punched Bridgers in the face and broke his nose. 34 SR 59. Harry also said that his mother rarely intervened in the disciplining of the kids, and that when she did, she was ordered to stay in her place. 34 SR 59. Educationally, Harry described Bridgers as "slow" and as someone who kept to himself. 34 SR 60. Furthermore, Harry testified that after Bridgers was released from prison, he seemed "different." 34 SR 62. He also described Bridgers as having deep depression and suicidal tendencies.[17] 34 SR 63-64. Similarly, Bridgers' grandmother testified that Bridgers had "low" intelligence. 34 SR 75.

Bridgers' wife, Tina, testified that when they first started living together, he was "nice, kind, respectful, [and] sweet." 34 SR 82-83. She said that Bridgers never physically disciplined her children and was never abusive to her. 34 SR 83. She indicated that when they first met, Bridgers was taking medication, but that he stopped taking it shortly after they got married. 34 SR 83-84. When he was not on medication, Bridgers withdrew and started hearing voices. 34 SR 84. She also found out that Bridgers was abusing cocaine. 34 SR 85. She indicated that during this time Bridgers twice attempted to commit suicide by trying to cut his wrists. 34 SR 85. At one point, Bridgers was checked into a mental hospital for

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was sent away the first time after he and a group of boys "broke into some machines." 34 SR 43. Bridgers was then sent away again when Bridgers and his brothers were in a house and "something came up missing." 34 SR 43-44.

[17] On cross-examination, Harry indicated that both he and Bridgers had abused drugs from an early age. He testified that by the age of twelve, both he and his brother regularly drank alcohol and smoked marijuana. 34 SR 65. He also said that Bridgers started using crack cocaine at age eighteen, and described his brother as a "crackhead." 34 SR 66-67.

a month and a half, but then went back to using cocaine as soon as he was discharged. 34 SR 87.

Finally, the defense elicited the testimony of a clinical psychologist named Dr. Walter Quijano. Quijano described the incidence of violence in the Texas prison system and suggested that murders and violent assaults were relatively rare. Specifically, he testified that only nine homicides occurred in Texas prisons in 1997, and that there were currently about 140,000 inmates in Texas penal institutions. 34 SR 98. He also testified that the incidence of inmate-on-inmate assaults was only 1,500 out of 140,000 prisoners, and the incidence of inmate-on-staff assaults was about 1,400 out of 140,000 prisoners. 34 SR 98. Quijano suggested that this relatively low incidence of violence could largely be attributed to an inmate classification system that was instituted in the early 1980s. 34 SR 101-02. Quijano also described the many opportunities for rehabilitation in the Texas prison system, including education, medical care, psychiatric care and vocational training. 34 SR 107-08. Finally, Quijano answered a hypothetical question from defense counsel based on Bridgers' personal history, and indicated that he believed that the prison system had the resources to control the potential violence of such a person. 34 SR 110-12.

On cross-examination of Quijano, the State established that Quijano had not done a "dangerousness assessment" in Bridgers' case. 34 SR 115-16. The State then successfully elicited various factors from Quijano which, in his opinion, would increase the risk of future violence by a person. For instance, Quijano described the factors associated with antisocial personality disorder, including the commission of criminal acts as a child which ultimately continue into adulthood. 34 SR 118-121. He indicated that a person who committed the instant offense and had an antisocial personality would have an increased risk of future violence. 34 SR 121-22. He also testified that the probability for future violence grew

where a person committed premeditated violence against someone who he has had only a short-term relationship with. 34 SR 126. Finally, Quijano admitted that while the prison system is designed to eliminate violence altogether, it fell short of that goal, and that not all violence is reported in prison. 34 SR 127-28, 136.

REASONS FOR DENYING THE WRIT

I.

THE QUESTIONS PRESENTED FOR REVIEW ARE UNWORTHY OF THE COURT'S ATTENTION.

The Rules of the Supreme Court provide that review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. SUP. CT. R. 10. Bridgers fails to advance a compelling reason for this Court to review his case, and none exists. Indeed, the questions presented involve only the state court's application of established constitutional principles. Accordingly, Bridgers' claims do not warrant the exercise of this Court's certiorari jurisdiction.

II.

BRIDGERS WAS NOT SEIZED WITHIN THE MEANING OF THE FOURTH AMENDMENT WHEN HE WAS INITIALLY APPROACHED BY FORT LAUDERDALE POLICE.

In his first ground for review, Bridgers argues that the actions of the Fort Lauderdale police constituted an illegal seizure within the meaning of the Fourth Amendment.[18] Petition at 7-9. In support of his argument, Bridgers states that when he was approached in the park, he was "surrounded by law enforcement officers with police insignia, guns and handcuffs," and that he therefore had no choice but to submit to the officers' authority. Petition at 9.

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[18] Although Bridgers' petition never specifically articulates why the alleged seizure was objectionable, he presumably means to attack the admissibility of his subsequent confession.

He further suggests that a reasonable person in the same circumstances would not have felt free to leave. Petition at 9. Finally, he notes that, after he agreed to go to the station-house, he was placed in handcuffs for the trip to the police station. Petition at 9. Bridgers maintains that these facts must lead to a conclusion that he had been placed in custody and that the Fourth Amendment was implicated.

The lower court rejected Bridgers' Fourth Amendment argument, concluding that the actions of the police did not amount to a seizure. *Bridgers v. State*, No. 73,112, slip op. at 7 (Tex. Crim. App. Oct. 25, 2000). The court based its holding on the following facts elicited at the pre-trial suppression hearing:

> [Bridgers] flew to Fort Lauderdale, Florida from the Dallas-Fort Worth airport on May 25, 1997. On May 28, Fort Lauderdale Police Department Detective Charles Morrow received information from Crime Stoppers on a possible suspect wanted for murder in Texas. Detective Morrow had no prior knowledge of the Texas murder and did not contact Texas authorities. Rather, he accompanied the individual who had provided the information to Crime Stoppers to the Holiday Park area of Fort Lauderdale. This confidential informant pointed out [Bridgers] as the person who had told him he had murdered a woman in Texas.
>
> Detective Morrow waited for additional detectives to arrive and then they entered the park and approached [Bridgers], who was lying in the grass. Detective Morrow testified that there were seven plainclothes officers in the vicinity but could not remember how many approached [Bridgers]. Morrow testified that his badge, gun, and handcuffs were displayed and it was obvious that he was a police officer.
>
> Upon approaching [Bridgers], Detective Morrow told him that he was conducting an investigation and asked [Bridgers] if he would accompany him to the police station. At the suppression hearing, Detective Morrow testified that [Bridgers] was "nervous, but cooperative" and agreed to go to the police station for questioning, saying "Okay. That's fine. Let's go." He also testified that if [Bridgers] had refused to go to the station, he would have been detained and questioned in the park. [Bridgers] was handcuffed and transported to the station in an unmarked car.

When they arrived at the Fort Lauderdale police station, Detective Morrow obtained [Bridgers'] driver's license which identified him as Allen Bridgers. Next, Detective Morrow took him to the interview room to meet with Detectives Jack King and Jack Gee. Detective Gee had obtained a fax of a warrant for [Bridgers'] arrest dated May 27 from the Smith County Sheriff's Department. According to Detective Morrow's testimony, it was at this point that [Bridgers] was under arrest.

When King and Gee entered the room, they introduced themselves to [Bridgers] and Detective King warned [Bridgers] from a card issued by the Fort Lauderdale Police Department. The card read as follows:

> You have the right to remain silent. Do you understand?
> Anything you say can and will be used against you in a court of law. Do you understand?
> You have the right to the presence of an attorney/lawyer prior to any questioning. Do you understand?
> If you cannot afford an attorney/lawyer, one will be appointed for you before any questioning if you so desire. Do you understand?
>
> [Bridgers] responded affirmatively to each question posed to him. He indicated that he was not sure whether he wanted an attorney or not. He did ask and was permitted to speak to his mother. After he received the warnings, [Bridgers] was asked if he knew why he was there and responded that Texas thought he had killed someone. Detective King asked, "Did you?" and Bridgers said, "Yes, you've got the right guy."
>
> After [Bridgers] finished talking to his mother, the detectives activated the tape recorder and administered the warnings a second time. Then Bridgers gave the confession at issue in which he admitted murdering Mary Amie and taking her purse, jewelry, and car. He requested two short stops and both requests were honored. Both Detectives King and Gee testified that [Bridgers] did not appear to be under the influence of any substances nor did his mental capacity seem diminished in any way. They also denied threatening [Bridgers] or promising him anything in return for his statement.

Bridgers, slip op. at 2-4.

After setting forth the facts, the Court of Criminal Appeals applied well-established

precedent from this Court and determined that the police did not "seize" Bridgers within the meaning of the Fourth Amendment. To the contrary, the lower court concluded that Bridgers voluntarily consented to Detective Morrow's request to accompany him to the station-house to answer some questions.

> The test for whether a police-citizen encounter is a Fourth Amendment seizure is an objective one: a person has been seized within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. *See California v. Hodari D.*, 499 U.S. 621, 628 (1991); *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). The reasonable person standard presupposes an innocent person. *See Florida v. Bostick*, 501 U.S. 429, 438 (1991).
>
> Several factors bear upon whether a reasonable person would have felt free to terminate the encounter and walk away. Among these factors are the threatening presence of several officers, the display of a weapon, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. *See Mendenhall*, 446 U.S. at 554; *see also Terry v. Ohio*, 392 U.S. 1, 19 (1968). The officer's perception of whether the citizen was free to leave is relevant only when he communicates that perception to the citizen by word or deed. *Stansbury v. California*, 511 U.S. 318 (1994).
>
> The trial court did not abuse its discretion by finding that the initial encounter in Holiday Park did not amount to a seizure under the Fourth Amendment. The United States Supreme Court has repeatedly emphasized the fact that the law does not prohibit officers from approaching citizens in public and asking for voluntary cooperation. *See Mendenhall*, 466 U.S. at 553; *Terry*, 392 U.S. at 34. In *Mendenhall*, the Court stated that "[a]s long as the person to whom the questions are put remains free to disregard the questions and walk away, there has been no intrusion upon that person's liberty or privacy as would under the Constitution require some particularized and objective justification." [*Mendenhall*, 466 U.S.] at 554.
>
> In the present case, the Florida detectives did not summon [Bridgers], command him, or surround him in uniform with their guns drawn. Furthermore, Detective Morrow testified that [Bridgers] seemed coherent and

able to voluntarily consent to go to the station. When asked if he would go to the station, [Bridgers] said, "Okay. That's fine. Let's go." [Bridgers] places weight on Detective Morrow's testimony that he would have detained [Bridgers] in the park if he had refused to cooperate. This fact, however, is irrelevant insomuch as Detective Morrow failed to communicate it to [Bridgers]. *See Stansbury*, 511 U.S. 318. In short, there is no evidence in the record that compels a finding that a reasonable person in [Bridgers'] position would not have felt free to walk away and terminate the encounter.

[Bridgers] also relies on the fact that he was handcuffed while being transported to the police station. Handcuffs are commonly understood to signify arrest, and a reasonable person in [Bridgers'] position might have felt "seized" at this time. However, the handcuffing of a defendant for the purpose of transporting him to a police station to continue an investigation does not necessarily implicate the Fourth Amendment. *See Rhodes v. State*, 945 S.W.2d 115, 117 (Tex. Cr. App. 1997). Handcuffing is just one of the factors in the analysis of whether a reasonable person in [Bridgers'] position would have felt free to leave. *See Rhodes*, 945 S.W.2d at 118. Furthermore, this Court affords almost total deference to a trial court's rulings on application of law to fact questions if the resolution of those questions turns on an evaluation of credibility and demeanor. *See Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Cr. App. 1997). The question whether a reasonable person in [Bridgers'] position would have felt free to leave involves the application of legal standards to the unique facts of the case and turns on the trial judge's evaluation of the credibility and demeanor of the witnesses who testify at the suppression hearing. The record supports the trial court's finding that [Bridgers] voluntarily accompanied the officers and was not seized until after the Florida detectives obtained the Texas warrant, and we will defer to it.

Bridgers, slip op. at 4-7.[19]

Other than labeling the Texas court's opinion as "ludicrous," Bridgers fails to explain how that court's holding was incorrect. *See* Petition at 9. Indeed, rather than take issue with

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[19] Because the Court of Criminal Appeals concluded that no seizure had occurred, it explicitly declined to reach the question of whether police had the proper quantum of cause necessary to detain or arrest Bridgers. *Bridgers*, slip op. at 7.

the court's legal conclusions, Bridgers seems to simply disagree with the lower court's factual determinations. For instance, he ominously characterizes himself as being "surrounded by law enforcement officers with police insignia, guns and handcuffs," whereas both the trial court and Court of Criminal Appeals determined that the officers' approach was much more benign.[20] Similarly, Bridgers claims that he was "shackled in handcuffs and hauled to the station house," whereas the Texas courts clearly found that the officer's actions were simply a routine safety precaution imposed *after* Bridgers consented to leave with Detective Morrow.[21] The Court of Criminal Appeals correctly deferred to the trial court on these basic factual determinations. *See Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997) (proscribing substantial deference to be given by Texas appellate courts to trial court's findings of fact); *see also Hernandez v. New York*, 500 U.S. 352, 356 (1991) ("The reasons justifying a deferential standard of review in other contexts . . . apply with equal force to a state trial court's findings of fact made in connection with a federal constitutional

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[20] The Court of Criminal Appeals explicitly noted the absence of any overreaching by Fort Lauderdale police. *See Bridgers*, slip op. at 6 ("[T]he Florida detectives did not summon [Bridgers], command him, or surround him in uniform with their guns drawn"). Similarly, in its findings of fact and conclusions of law, the trial court determined that "[t]he police officer merely approached the Defendant, who was in a public place, that being a park, and engaged the Defendant in conversation and indicated that he was requesting that the Defendant accompany him to the police station for questioning in connection with an ongoing investigation." 25 SR 118. The court then stated that Bridgers, who was not under arrest, "then voluntarily, freely, and intelligently agreed to go down to the police station, to accompany the officer, to assist the officer in an ongoing investigation regarding the accusation made by the confidential informant." 25 SR 118.

[21] One of the detectives involved in the arrest testified at trial that handcuffing someone before transporting them to the police department was "the proper thing to do according to our procedure manual of the Fort Lauderdale Police Department for officer safety." 26 SR 108. The Court of Criminal Appeals seemed to suggest in its opinion that the fact that the police did not place the handcuffs on Bridgers until *after* he consented to go to the police station was of crucial importance to its holding. Specifically, by relying on *Rhodes v. State*, 945 S.W.2d 115, 117 (Tex. Crim. App. 1997), the court implied that this factor was not due as much weight given that Bridgers had already voluntarily consented to leave with the police and given the inherent dangers of transporting a homicide suspect.

claim. Our cases have indicated that, in the absence of exceptional circumstances, we would defer to state-court factual findings, even when those findings relate to a constitutional issue") (citations omitted). Although Bridgers clearly disagrees with the Texas courts' factual conclusions, they are all supported by the record and do not warrant reconsideration in this Court.

Moreover, there was simply no violation of the Fourth Amendment in these circumstances. As the Court of Criminal Appeals noted, police were free to approach Bridgers and ask for his cooperation. *See Mendenhall*, 466 U.S. at 553. There is no evidence in the record that any show of force was used by police to induce this cooperation. Thus, Bridgers was free to refuse to assist Detective Morrow, but instead voluntarily chose to lend his assistance and accompany police to the station-house. Accordingly, no seizure had occurred and the Fourth Amendment was not implicated. Certiorari review is therefore not warranted.

III.

BY WARNING BRIDGERS THAT HE HAD "THE RIGHT TO THE PRESENCE OF AN ATTORNEY/LAWYER PRIOR TO ANY QUESTIONING," FLORIDA POLICE FULLY COMPLIED WITH THE REQUIREMENTS IMPOSED BY THE FIFTH AMENDMENT.

Bridgers next argues that the language of the *Miranda* warnings utilized by Fort Lauderdale police effectively restricted his Fifth Amendment right to counsel to a period of time before, but not during, any subsequent interrogation. Petition at 9-11. Bridgers maintains that the warning implied that "[o]nce the interrogation began, his lawyer would have to leave the room." Petition 10-11.

As indicated by the facts set forth in Part II, *supra*, Fort Lauderdale police read Bridgers the following set of warnings:

> You have the right to remain silent. Do you understand?
> Anything you say can and will be used against you in a court of law. Do you understand?
> You have the right to the presence of an attorney/lawyer prior to any questioning. Do you understand?
> If you cannot afford an attorney/lawyer, one will be appointed to for you before any questioning if you so desire. Do you understand?

25 SR 65-66, 71; 27 SR 12-16; SX 3, 4. Bridgers affirmatively acknowledged each of his rights before being questioned by Detective King. 25 SR 65-66, 71-72; 27 SR 14-16; SX 4.

In resolving Bridgers' complaint, the Texas court acknowledged *Miranda*'s requirement that "'prior to any questioning, the person must be warned that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.'" *Bridgers*, slip op. at 7 (quoting *Miranda v. Arizona*, 384 U.S. 436 444 (1966)). Nevertheless, the court rejected Bridgers' argument that the warnings in the instant case were constitutionally deficient:

> Certainly, the right to the presence of an attorney during questioning is a crucial vehicle for safeguarding the privilege against self-incrimination. *See Miranda*, 384 U.S. at 470. However, we do not think that the above warning is susceptible to the interpretation [Bridgers] advances. The detectives did not tell [Bridgers] that he had the right to consult or speak to an attorney before questioning, which might have created the impression that the attorney could not be present during interrogation. They told him that he had the right to the *presence* of an attorney before questioning commenced. We think that this conveyed to [Bridgers] that he was entitled to the presence of an attorney before questioning and that this attorney could remain during questioning.

Bridgers, slip op. at 8. The court then went on to note that no "talismanic incantation" was

required under *Miranda* so long as the warnings given conveyed the substance of Bridgers' Fifth Amendment rights. *Id.* at 8-9 (citing *Duckworth v. Eagan*, 492 U.S. 195, 202 (1989); *California v. Prysock*, 453 U.S. 355, 359-60 (1981)). The Texas court then concluded that "[t]he warnings administered to [Bridgers]. . . fully conveyed his right to the presence of an attorney before and during questioning, and his statement was not inadmissible under *Miranda*." *Bridgers*, slip op. at 9.

In *California v. Prysock*, 453 U.S. 355, 359-60 (1981) (per curiam), this Court rejected the proposition that *Miranda* required a verbatim recital of its warnings regarding the right to counsel. To the contrary, the Court noted that the *Miranda* opinion, itself, required only that police give either the warnings articulated by the Court or their "'*fully effective equivalent*.'" *Id.* at 359-60 (emphasis in original) (quoting *Miranda*, 384 U.S. at 476). "Reviewing courts therefore need not examine *Miranda* warnings as if construing a will or defining the terms of an easement. The inquiry is simply whether the warnings reasonably 'conve[y] to [a suspect] his rights as required by *Miranda*.'" *Duckworth v. Eagan*, 492 U.S. 195, 203 (1989) (quoting *Prysock*, 453 U.S. at 361).

In the instant case, Bridgers was fully informed of his Fifth Amendment right to consult with counsel prior to or during any questioning by police. As the Court of Criminal Appeals noted, the warnings given did not preclude the presence of an attorney during police interrogation. Rather, the warnings simply communicated that Bridgers had the right to the presence of a lawyer before any questioning began. Moreover, Bridgers was told that if he could not afford a lawyer, "one [would] be appointed for [him] before any questioning." These warnings surely complied with the Fifth Amendment. The strained interpretation that Bridgers advances is contained in neither the spirit nor the letter of the warnings given by Fort Lauderdale police. As such, certiorari review should be denied.

IV.

THE TEXAS CAPITAL SENTENCING SCHEME DOES NOT VIOLATE THE DUE PROCESS CLAUSE BY EXCLUDING INFORMATION ABOUT PAROLE ELIGIBILITY FROM THE JURY.

Bridgers next asserts that he was denied due process of law based on the trial court's failure to inform the jury that he would be ineligible for parole for forty years if given a life sentence. Petition at 11-20. Specifically, Bridgers maintains that an instruction regarding parole eligibility was mandated by this Court's opinion in *Simmons v. South Carolina*, 512 U.S. 154 (1994). He further argues that the State's closing argument during the punishment phase of trial implied that, unless Bridgers was given the death penalty, he would be quickly released from prison on parole. He therefore argues that without an instruction specifically informing jurors of the minimum period of parole ineligibility, the jury was unable to properly evaluate the future dangerousness special issue.

Contrary to Bridgers' assertion, this Court's opinion in *Simmons* is inapplicable to capital sentencing schemes – like the one in Texas – where life without parole is not a sentencing option. In *Simmons*, this Court held that a capital defendant possesses a due process right to inform the jury of his ineligibility for parole where (1) life without the possibility of parole is the alternative to a death sentence; and (2) future dangerousness is part of the sentencing inquiry. *Simmons*, 512 U.S. at 156 (plurality opinion); *id.* at 177-78 (O'Connor, J., joined by the Chief Justice and Kennedy, J.). A majority of the Court, however, limited its holding from affecting those states, such as Texas, where life without parole is not a sentencing option.[22] *Id.* at 156 (plurality opinion) (limiting holding to

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[22] In support of his argument that *Simmons* should be applied against states like Texas, Bridgers cites Justice Stevens' opinion dissenting from the Court's denial of certiorari review in *Brown v. Texas*, 522 U.S. 940, 118 S. Ct. 355 (1997). Petition at 17-18. Writing for four dissenters,

situations where "state law prohibits the defendant's release on parole"); *id.* at 176 (O'Connor, J., concurring) ("In a State in which parole is available, the Constitution does not require (or preclude) jury consideration of that fact"). Moreover, in its recent opinions in *Shafer v. South Carolina* and *Ramdass v. Angelone*, the Court has reaffirmed this interpretation of *Simmons*. *Shafer v. South Carolina*, 2001 WL 265350, *4 (U.S. Mar. 20, 2001) (describing *Simmons* as holding that "where a capital defendant's future dangerousness is at issue, and the only sentencing alternative to death available to the jury is life without possibility of parole," due process entitles defendant to inform jury about his parole ineligibility) (citation omitted); *Ramdass v. Angelone*, 530 U.S. 156, 166 (2000) (plurality opinion) ("The parole-ineligibility instruction is required only when, assuming the jury fixes the sentence at life, the defendant is ineligible for parole under state law").

Bridgers further argues that the State's closing argument implied that if the jury "sentence[d] [Bridgers] to life, he would be out in a couple of years and victimize someone else 'if predators like [Bridgers] are allowed to run around in our society.'" Petition at 13 (quoting 35 SR 61). However, Bridgers' petition misinterprets the State's closing argument regarding Bridgers' prior experiences with parole. At no time did the State argue that a death sentence was necessary to prevent the possibility of parole. Rather, the State's argument merely recounted Bridgers' criminal history and the number of opportunities he had been given to reform. The prosecutor's argument then noted that Bridgers had refused to take advantage of those opportunities and that he had proved himself to be an incorrigible criminal. Thus, the State simply argued that Bridgers' future conduct would most likely mirror his past, and that the jury should therefore affirmatively answer the future dangerousness special issue. Accordingly, the State did not leave the jury with the "mis-impression" that Bridgers would quickly be paroled if sentenced to life imprisonment for capital murder.

In the instant case, Bridgers concedes that he was not ineligible for parole under Texas law for the capital murder of Mary Amie. Petition at 16. Indeed, Bridgers would have been eligible for parole after serving forty years of a life sentence for capital murder. TEX. CODE CRIM. PROC. ANN. art. 42.18, § 8(b)(2) (Vernon Supp. 1998). Because this Court has never extended *Simmons* beyond the context of parole ineligible capital offenders, and has in fact explicitly declined to extend that holding to facts similar to these, Bridgers cannot seriously contend that he was denied due process when the trial court failed to give a parole eligibility instruction to the jury. For these reasons, Bridgers is not entitled to certiorari review and his petition should be denied.

V.

THE TEXAS CAPITAL SENTENCING SCHEME DOES NOT VIOLATE THE EIGHTH AMENDMENT BY EXCLUDING INFORMATION ABOUT PAROLE ELIGIBILITY FROM THE JURY.

Finally, Bridgers argues that the trial court violated the Eighth Amendment by refusing to submit a jury instruction regarding his potential parole eligibility. Petition at 20-25. Specifically, Bridgers argues that "evolving standards of decency" and "a heightened degree of procedural reliability" require Texas courts to instruct capital sentencing juries

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Justice Stevens stated that there was "obvious tension" between the holding of *Simmons* and the Texas rule prohibiting the introduction of information on parole eligibility. *Brown*, 118 S. Ct. at 355. Nevertheless, as Bridgers acknowledges, the opinion of the *Brown* dissenters is not precedent. However, with regard to the concerns expressed by those four Justices, it should be noted that Texas now requires that, upon request of the defense, capital sentencing juries shall be informed of the potential effect of the parole laws on a life sentence. TEX. CODE CRIM. PROC. ANN. art. 37.071, § 2(e)(2) (Vernon 2000). Therefore, for charging instruments dated after September 1, 1999, this issue should not arise.

regarding the minimum period of parole ineligibility. Petition at 21-22. According to Bridgers, without such an instruction, Texas risks "arbitrary and capricious" sentencing determinations by its capital juries. Petition at 22. Citing *Romano v. Oklahoma*, 512 U.S. 1 (1994), Bridgers also maintains that under the Eighth Amendment, Texas must justify the absence of such an instruction by showing that a life sentence is somehow inadequate to reach its sentencing goals. Petition at 22-24. Finally, Bridgers argues that the minimum period of parole ineligibility is a mitigating factor that the jury must consider under the Eight Amendment. Petition at 24-25.

The plurality in *Simmons* described its holding as being compelled by the Due Process Clause, and thus expressly declined to decide whether the Eighth Amendment compelled the same conclusion. *Simmons*, 512 U.S. at 162 n.4. Nevertheless, when evaluating evidentiary matters in the capital sentencing context, the Court's Eighth Amendment jurisprudence has generally been limited to identifying the classes of potentially mitigating evidence to which the jury must be allowed to give mitigating effect and the procedures that are sufficient for this purpose. *See California v. Ramos*, 463 U.S. 992, 999 (1983) (noting that, in construing Eighth Amendment, Court has been primarily concerned with *procedures* by which states impose death sentences rather than with substantive factors capital juries are allowed to consider). In particular, the Eighth Amendment requires that "'the sentencer. . . not be precluded from considering, *as a mitigating factor*, any aspect of a defendant's character or record and any circumstances of the offense that the defendant proffers as a basis for a sentence less than death.'" *Eddings v. Oklahoma*, 455 U.S. 104, 110 (1982) (emphasis in original) (quoting *Lockett v. Ohio*, 438 U.S. 586, 604 (1978) (plurality opinion)).

Lockett and *Eddings* reflect the view that a capital defendant is entitled to an individualized sentencing decision that is a reasoned moral response to the defendant's personal culpability. *See, e.g., Penry v. Lynaugh*, 492 U.S. 302, 319 (1989). Once a defendant has been determined to be "eligible" for the death sentence, the Eighth Amendment requirements for the "selection" (or individualized sentencing) determination are satisfied if the procedures "allow the jury to consider the character and record of the defendant and the circumstances of the crime." *Tuilaepa v. California*, 512 U.S. 967, 972 (1994); *see also Saffle v. Parks*, 494 U.S. 484, 494 (1990). Further, the Court has held that "there is no . . . constitutional requirement of unfettered sentencing discretion in the jury, and States are free to structure and shape consideration of mitigating evidence 'in an effort to achieve a more rational and equitable administration of the death penalty.'" *Boyde v. California*, 494 U.S. 370, 377 (1990) (quoting *Franklin v. Lynaugh*, 487 U.S. 164, 181 (1988) (plurality opinion)).

The Eighth Amendment issue that Bridgers raises, however, does not involve the admission or exclusion of any of these categories of potentially relevant mitigating evidence, *i.e.*, evidence of his character and record and the circumstances of the crime. *See Smith v. State*, 898 S.W.2d 838, 853 (Tex. Crim. App. 1995) (noting that the state's parole laws are not in any way part of a capital defendant's character, record, or circumstances of the offense) (citing *Ramos*, 463 U.S. at 1021 (Marshall, J., dissenting)). A parole instruction in no way relates to Bridgers culpability and, therefore, could not render him less *deserving* of the death penalty.

In this regard, it is important to distinguish between (1) those categories of mitigating evidence that the Court has explicitly derived from the Eighth Amendment and that must be considered by a jury in assessing a death sentence, and (2) evidence that attains

constitutional significance only as a consequence of the state's choice of sentencing procedure. Under the capital sentencing statute applicable in Bridgers' trial, evidence that fell within the first category was fully encompassed by the second special issue:

> Taking into consideration all of the evidence, including the circumstances of the offense, the defendant's character and background, and the personal moral culpability of the defendant, is there sufficient mitigating circumstance or circumstances to warrant that a sentence of life imprisonment rather than a death sentence be imposed?

3 Tr 361. Thus, evidence that a capital offense was an isolated act of violence or that a defendant would otherwise generally be a non-violent person are aspects of a defendant's character that are fully encompassed within the second special issue.

In contrast, the issue raised by Bridgers arises only as a consequence of the state's decision to have the sentencing decision rest in part on the first special issue:

> Is there a probability that the defendant, ALLEN BRIDGERS would commit criminal acts of violence that would constitute a continuing threat to society?

3 Tr 360. Where, as here, the prerequisites for the assessment of a death sentence imposed by state procedure exceed those required by the Eighth Amendment, it is appropriate to address the constitutionality of those state-imposed requirements under the Due Process Clause rather than under the Eighth Amendment, as this Court did in *Skipper v. South Carolina*, 476 U.S. 1 (1986). As the Court noted, "the States, and not this Court, retain 'the traditional authority' to determine what particular evidence within the broad categories described in *Lockett* and *Eddings* is relevant in the first instance." *Skipper*, 476 U.S. at 11 (Powell, J., joined by Burger, C.J., and Rehnquist, J., concurring). The general relevance or admissibility of evidence, whether it be at the guilt/innocence or punishment phase of trial, does not implicate Eighth Amendment concerns and is properly analyzed under the Due

Process Clause of the Fourteenth Amendment. *See Romano v. Oklahoma*, 512 U.S. 1, 11-12 (1994) (rejecting petitioner's attempt to "fashion general evidentiary rules under the guise of the Eighth Amendment, which would govern the admissibility of evidence at capital sentencing proceedings"). That due process challenge must, of course, fail under *Simmons*, *Shafer*, and *Ramdass*, as discussed in Part IV, *supra*.

In any event, where the twin requirements imposed by the Eighth Amendment have been met – *i.e.*, the defendant has been found eligible for a death sentence by a finding that he falls within the narrowed class of death-eligible offenders, and the defendant has been "selected" for a death sentence after an individualized consideration of his mitigating evidence – then the choice of capital sentencing procedures is purely a matter of state law. Contrary to Bridgers' argument, parole eligibility in Texas is irrelevant to whether a capital defendant will present a future danger to society. Under Texas law, the term "'society' has been defined to include both prison and non-prison populations." *Smith v. State*, 898 S.W.2d at 852 n.19. Thus, the "argument in Texas by the prosecutor is that the defendant will commit criminal acts of violence whether he is in prison or out of prison." *Id.*; *see also Allridge v. Scott*, 41 F.3d 213, 222 n.12 (5th Cir. 1994) ("[W]hen the state argues that the defendant poses a future danger to everybody, fellow inmates included, then *Simmons* is inapplicable because whether the defendant is eligible for parole is irrelevant") (citation omitted). Because Bridgers' jury could consider his future dangerousness both inside and outside of prison, Texas' restriction on irrelevant parole information did not violate Bridgers' constitutional rights. Bridgers' petition for writ of certiorari should therefore be denied.

VI.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the petition for writ of certiorari be denied.

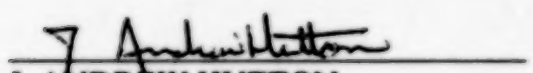
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